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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 GABRIEL HILARIO ALCARAZ)
MARTINEZ, CHRISTIAN FIDAL)
13 ARECHIGA TORRES and RAMON)
ALEJANDRO HERNANDEZ GARCIA,)

14 Plaintiffs,)

15 vs.)

16 THOMAS F. WHITE,)

17 Defendant.)
18

Case No. C-06-1595-CRB

Date: November 17, 2006
Time: 10:00 a.m.
Courtroom: 8, 19th Floor

19
20 **DECLARATION OF DAVID REPLOGLE IN SUPPORT OF**
21 **MOTION TO TAKE DEPOSITIONS IN PRISON, TO PERMIT**
22 **DEPOSITIONS TO EXCEED ONE DAY OF SEVEN HOURS**
23 **AND TO APPOINT MAGISTRATE JUDGE DISCOVERY REFEREE**
24

25 I, David Replogle, declare and state:

26 1. I am an attorney licenced to practice before all courts of the State
27 of California, a member of the bar of this court and the sole shareholder of the Law
28 Offices of David Replogle, a Professional Corporation, attorneys for

1 Plaintiffs in the within action. The following facts are known to me personally
2 and if called as a witness I could, and would, testify competently thereto.

3 2. According to the records of this court, both Thomas F. White and
4 Nathan Lovaas were indicted by the Grand Jury for the Northern District of
5 California for their actions in traveling to foreign countries to engage in illegal
6 sexual contact with children and/or to produce child pornography in violation of
7 federal law.

8 3. According to the records of this court, Lovaas pled guilty and
9 was sent to the Butner federal facility in North Carolina. Today I checked the
10 website for the Department of Prisons and, according to that website, Lovaas is
11 currently being held at the federal correctional institute in Taft, California.

12 4. White has not yet been arraigned in the United States. Initially,
13 White fled Mexico to evade arrest by the Mexican authorities. In February of
14 2003 White was apprehended by the Thai authorities at the request of the Mexican
15 authorities. On or about July 31, 2005, White was extradited to Mexico. White
16 is being held at the state prison near Puerto Vallarta, Mexico. It is not known if or
17 when White might be released from Mexican prison.

18 5. White has been incarcerated in a third world prison for well over
19 3 years. White is 70 years old and is reportedly in poor health.

20 6. I require the depositions of both White and Lovaas in order to
21 prosecute the action, identify other witness that will need to be deposed and
22 prepare for trial. Except for the Plaintiffs, White and Lovaas are the only other
23 individuals of which I am aware with any percipient knowledge of the underlying
24 facts.

25 7. Furthermore, because Lovaas has already been convicted and is
26 serving his sentence, I do not believe Lovaas will not be able to assert his right not
27 to testify under the Fifth Amendment. I believe that Lovaas will prove, therefore,
28 to be able to provide valuable information to Plaintiffs not available

1 through any other source.

2 8. Not only is White 70 years old, but his health is reportedly in
3 precarious condition. For that additional reason, it is necessary to take his
4 deposition as soon as possible.

5 9. There are three individual plaintiffs in this action. The three
6 claims are distinct and it will be necessary, therefore, to depose White and Lovaas
7 on three distinct claims. Based on the fact that the claims are distinct, I believe it
8 will take more than one day of seven hours to complete the requested depositions.

9 10. Taking a deposition at the prison in Mexico will require that I
10 bring a court reporter and, possibly, a video operator. The deposition will require,
11 therefore, considerable expense. If I make the arrangements and pay the expenses,
12 I am concerned that defense counsel will simply interpose objections to all
13 questions, regardless whether the objections have any basis in fact or law. In
14 order to be able to complete an orderly deposition and to complete other discovery
15 in this case, I believe it is essential that the court appoint a magistrate judge to hear
16 and determine all discovery issues.

17 11. On October 4, 2006 I transmitted an e-mail to Geoffrey Rotwein
18 and requested that Mr. Rotwein stipulate to the orders sought by this motion. I
19 did not receive an e-mail response from Mr. Rotwein.

20 I declare under penalty of perjury that the foregoing is true and correct
21 except as to those matters stated on information and belief and, as to those matters,
22 I believe it to be true.

23 Executed on October 6, 2006 at Kona, Hawaii.

24 /s/

25 _____
26 DAVID REPLOGLE
27
28

PROOF OF ELECTRONIC SERVICE

I declare under penalty of perjury that the foregoing is true and correct:

I am a citizen of the United States over the age of eighteen years, employed in the City and County of San Francisco, California, and not a party to the within entitled cause; my business address is 550 Montgomery Street, Suite 550, San Francisco, California.

On October 6, 2006 I served the following:

**DECLARATION OF DAVID REPLOGLE IN SUPPORT OF
MOTION TO TAKE DEPOSITIONS IN PRISON, TO PERMIT
DEPOSITIONS TO EXCEED ONE DAY OF SEVEN HOURS
AND TO APPOINT MAGISTRATE JUDGE DISCOVERY
REFEREE**

on the interested party(ies) in said cause, by causing an electronic delivery subject to 28 U.S.C. § 1746, Local Rules or General Orders of this Court regarding Electronic Case Filing addressed as follows:

Geoffrey Rotwein
400 Montgomery St., Ste. 200
San Francisco, CA 94104
E-mail: geoffrottwein@sbcglobal.net

Attorneys for Defendant
Thomas F. White

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 6, 2006 at Kona, Hawaii.

David Replogle

DAVID REPLOGLE